

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, et al.,

No. C-07-2659 JCS

Plaintiffs,

v.

CITY OF OAKLAND et al.,

Defendants.

COURT'S PROPOSED SPECIAL VERDICT FORM

Dated: December 3, 2008



JOSEPH C. SPERO
United States Magistrate Judge

JURY VERDICT

We, the jury, unanimously find as follows:

I. Liability

A. First 42 U.S.C. § 1983 Claim – Freedom of Expression

1. Do you find by a preponderance of the evidence that defendant Alcantar deprived plaintiff Ortega of his right to freedom of expression by detaining/arresting him?

___ Yes ___ No

If you answer yes, go to question 2. If you answer no, go to question 3.

2. Do you find by a preponderance of the evidence that defendant Alcantar's violation of plaintiff Ortega's right to freedom of expression by detaining/arresting him was a substantial factor in causing plaintiff's harm?

___ Yes ___ No

Go to question 3.

B. Second 42 U.S.C. § 1983 Claim – False Arrest

3. Do you find by a preponderance of the evidence that defendant Alcantar detained/arrested plaintiff Benjamin Ortega without probable cause?

___ Yes ___ No

If you answer yes, go to question 4. If you answer no, go to question 5.

4. Do you find by a preponderance of the evidence that the arrest/detention was a substantial factor in causing plaintiff's harm?

___ Yes ___ No

Go to question 5.

C. Third 42 U.S.C. § 1983 Claim – Excessive Force

5. Do you find by a preponderance of the evidence that defendant Alcantar used excessive force when he detained/arrested plaintiff Ortega?

___ Yes ___ No

If you answer yes, then go to question 6. If you answer no, go to question 7.

6. Do you find by a preponderance of the evidence that defendant Alcantar's use of excessive force in detaining/arresting plaintiff Ortega was a substantial factor in causing plaintiff's harm?

___ Yes ___ No

Go to question 7.

D. Assault

7. Do you find by a preponderance of the evidence that defendant Alcantar assaulted plaintiff Ortega?

___ Yes ___ No

If you answer yes, go to question 8. If you answer no, go to question 9.

8. Do you find by a preponderance of the evidence that defendant Alcantar's conduct was a substantial factor in causing plaintiff Ortega's harm?

___ Yes ___ No

Go to question 9.

E. Battery By a Peace Officer

9. Do you find by a preponderance of the evidence that defendant Alcantar committed battery upon plaintiff Ortega?

___ Yes ___ No

If you answer yes, go to question 10. If you answer no, go to question 11.

10. Do you find by a preponderance of the evidence that defendant Alcantar's conduct was a substantial factor in causing plaintiff Ortega's harm?

___ Yes ___ No

Go to question 11.

F. Violation of Bane Act – Cal. Civ. Code § 52.1

11. Do you find by a preponderance of the evidence that defendant Alcantar interfered with plaintiff Ortega's civil rights by threatening to commit or committing violent acts against plaintiff Ortega?

___ Yes ___ No

1 If you answer yes, go to question 12. If you answer no, go to question 13.

2 12. Do you find by a preponderance of the evidence that defendant Alcantar's conduct
3 was a substantial factor in causing plaintiff Ortega's harm?

4 ___ Yes ___ No

5 Go to question 13.

6 **G. Violation of Ralph Act – Cal. Civ. Code § 51.7**

7 13. Do you find by a preponderance of the evidence that defendant Alcantar threatened to
8 commit or committed violent acts against plaintiff Ortega because of his national
9 origin?

10 ___ Yes ___ No

11 If you answer yes, go to question 14. If you answer no, go to question 15.

12 14. Do you find by a preponderance of the evidence that defendant Alcantar's conduct
13 was a substantial factor in causing plaintiff Ortega's harm?

14 ___ Yes ___ No

15 Go to question 15.

16 **H. Negligence**

17 15. Do you find by a preponderance of the evidence that defendant Alcantar was
18 negligent?

19 ___ Yes ___ No

20 If you answer yes, go to question 16. If you answer no, go to question 17.

21 16. Do you find by a preponderance of the evidence that defendant Alcantar's negligence
22 was a substantial factor in causing plaintiff Ortega's harm?

23 ___ Yes ___ No

24 Go to question 17.

25 **I. Intentional Infliction of Emotional Distress**

26 17. Do you find by a preponderance of the evidence that plaintiff Ortega wilfully
27 committed conduct that caused plaintiff to suffer severe emotional distress?

28 ___ Yes ___ No

1 If you answer yes, go to question 18. If you answer no, go to question 19.

2 18. Do you find by a preponderance of the evidence that defendant Alcantar's conduct
3 was a substantial factor in causing plaintiff Ortega's harm?

4 ___ Yes ___ No

5 Go to question 19.

6 **II. DAMAGES**

7 19. If you answered "yes" to questions 2, 4, 6, 8, 10, 12, 14, 16, or 18, what is the total
8 amount of compensatory damages, if any, that should be awarded to plaintiff Ortega?

9 \$ _____

10 Proceed to question 20.

11 20. Do you find by a preponderance of the evidence that defendant Alcantar's conduct
12 was either malicious or committed in reckless disregard of plaintiff Ortega's rights?

13 ___ Yes ___ No

14 If yes, proceed to question 21.

15 21. Do you award plaintiff Ortega punitive damages?

16 ___ Yes ___ No

17 If yes, proceed to question 22.

18 22. What is the amount of punitive damages against defendant Alcantar?

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SIGN AND DATE THE SPECIAL VERDICT FORM

Signed: _____

Foreperson of the Jury: _____

Dated: _____

After this Verdict Form has been signed and dated, please submit a Jury Note to the Court Security Officer notifying the Court that the Jury has reached a verdict. Please return the Verdict Form to the Courtroom Deputy.